

Message Text

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11

ACTION EB-11

INFO OCT-01 ARA-16 ISO-00 AGR-20 CEA-02 CIAE-00 COME-00

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PA-04 RSC-01 AID-20 CIEP-02 SS-20 STR-08 TAR-02

TRSE-00 USIA-15 PRS-01 SP-03 FEA-02 OMB-01 SWF-02

DRC-01 /163 W

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R 171838Z MAY 74

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 2822

INFO AMEMBASSY BRASILIA

AMEMBASSY GUATEMALA

AMCONSUL GUAYAQUIL

AMEMBASSY MANAGUA

AMEMBASSY PANAMA

AMEMBASSY QUITO

AMEMBASSY SAN JOSE

AMEMBASSY SAN SALVADOR

AMEMBASSY TEGUCIGALPA

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E.O. 11652: N/A

TAGS: EAGR CO

SUBJECT: BANANA EXPORT TAX

RE: (A) STATE 099650

(B) BOGOTA 4044

1. FOLLOWING BRIEF SKETCH OF RELATIONSHIP IN COLOMBIA
BETWEEN UNITED BRANDS AND BANANA GROWERS MAY BE USEFUL IN
ASSESSING IMPACT RECENT GOC ACTIONS. UNITED BRANDS DOMINATES
TRADE IN COLOMBIA AND ITS CONTRACTUAL ARRANGEMENTS
WITH GROWERS ESTABLISH BASIC FRAMEWORK FOR SALES AND
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EXPORTS. UNITED BRANDS LOCAL ORGANIZATION, COMPANIA FRUTERA

DE SEVILLA ACTS SOLELY AS AGENT FOR PRODUCERS. CONTRACT BETWEEN SEVILLA AND GROWER ESTABLISHES AGENT RELATIONSHIP AND DESIGNATES LATTER AS "EXPORTER" LEGALLY RESPONSIBLE FOR ALL EXPORT PROCEDURES AND COSTS, (INCLUDING PAYMENT OF "REINTEGRO"), UNTIL BANANAS LOADED ON VESSEL. FRUTERA ACTUALLY HANDLES THESE MATTERS BUT ONLY AS AGENT FOR PRODUCER. SALES ARE GOVERNED BY SEPARATE CONTRACT BETWEEN PRODUCER AND UNITED FRUIT CONTINENTAL, B.V. OF ROTTERDAM. THE CONTRACT ESTABLISHES ALL CONDITIONS OF SALE, INCLUDING PRICE, AND ALSO DESIGNATES PRODUCER AS LEGAL EXPORTER. ALSO SHOULD BE NOTED THAT INCREASE IN AMOUNT OF FOREIGN EXCHANGE THAT MUST BE SURRENDERED (REINTEGRO) IS NOT TECHNICALLY A TAX SINCE EXPORTER RECIEVES PESO COUNTERPART.

2. FOLLOWING RESPONSES CORRESPOND TO SPECIFIC LETTERED QUESTIONS, PARA 2, REFTEL (A).

(A) IN COLOMBIA THE GROWER IS ALSO THE "EXPORTER" LEGALLY RESPONSIBLE FOR PAYMENT OF "REINTEGRO".

(B) FOR ALL PRACTICAL PURPOSES EXPORTER CATEGORY INCLUDES ONLY GROWERS DUE TO CONTRACTUAL ARRANGEMENTS DESCRIBED ABOVE.

(C) SALE OF BANANAS TO FOREIGN COMPANY OCCURS FOB VESSEL.

(D) SALE PRICE IS FIXED IN DOLLARS IN CONTRACT BETWEEN GROWER AND UNITED FRUIT CONTINENTAL AT U.S. \$1.05 PER BOX FOR FIRST CLASS FRUIT AND U.S. \$0.50 PER BOX FOR SECOND CLASS OR SPECIAL FRUIT. CHECK IN PAYMENT IS SENT DIRECTLY BY CONTINENTAAL TO BANCO DE COLOMBIA WHICH DEPOSITS "REINTEGRO" WITH BANCO DE LA REPUBLICA (CENTRAL BANK) AND PESO COUNTERPART ACCORDING TO CONTRACT PRICE IN ACCOUNTS OF GROWERS.

(E) UNTIL NOW CONTINENTAAL'S PROFIT CONSISTED OF DIFFERENCE BETWEEN CONTRACT PRICE AND MARKET PRICE MINUS

OF COURSE SUCH ITEMS AS SHIPPING, UNLOADING AT DESTINATION, COST OF BOX AND COMMISSIONS. QUESTION AT MOMENT IS WHAT HAPPENS TO PESO COUNTERPART OF U.S. \$0.40 INCREASE IN "REINTEGRO". CONTINENTAAL HAS SENT TELEGRAM TO FRUTERA DE SEVILLA ASKING IT IN TURN TO INFORM GROWERS THAT IT IS WILLING TO PROVIDE THEM WITH FOREIGN EXCHANGE TO LIMITED OFFICIAL USE

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COVER INCREASE BUT ONLY ON UNDERSTANDING THAT PESO COUNTERPART WOULD BELONG TO CONTINENTAAL. LOCAL UNITED REPRESENTATIVE WHILE UNDERSTANDING CONTINENTAAL'S DESIRE TO PROTECT LEGAL CONTRACT POSITION (THEY FEAR LAWSUITS BY STOCKHOLDERS) CONSIDERS PROPOSAL A MISTAKE THAT WOULD RESULT IN VERY ADVERSE REACTION FROM BOTH GOC AND GROWERS AND IS ADVOCATING EQUIL SHARING OF INCREASE BETWEEN COMPANY AND GROWERS.

(F) NO PESO PROFITS CAN BE EARNED THROUGH THE EXCHANGE OF DOLLARS AT THE CENTRAL BANK. THERE IS A THEORETICAL POSSIBILITY OF PESO PROFITS BEING MADE THROUGH THE USE OF TAX CREDIT CERTIFICATES AND OVER-INVOICING. AS DEPARTMENT AWARE COLOMBIA HAS EXPORT INCENTIVE SCHEME WHICH INVOLVES GRANTING OF CERTIFICATES (CAT) TO EXPORTERS THAT CAN BE USED TO PAY TAXES OR SOLD AT DISCOUNT THROUGH STOCK EXCHANGE. IN CASE OF BANANAS, GROWER RECEIVES CERTIFICATE EQUIVALENT TO 13 PER CENT OF CONTRACT PRICE. IN THEORY GROWER COULD OVERINVOICE SALES AND RECEIVE 13 PERCENT CAT ON INFLATED VALUE. DIFFERENCE BETWEEN ACTUAL EXCHANGE PROCEEDS AND HIGHER DECLARED AMOUNT THAT WOULD HAVE TO BE SURRENDERED TO CENTRAL BANK COULD BE PURCHASED IN BLACK MARKET. SINCE MARGIN OF BLACK MARKET OVER OFFICIAL RATE IS LOW A SMALL PROFIT COULD CONCEIVABLY BE EARNED. THERE IS STRONG SUSPICION THAT SOMETHING LIKE THIS PROCEDURE HAS BEEN USED IN EMERALD EXPORTS BUT CONSIDERED HIGHLY UNLIKELY IN CASE OF BANANAS.

(G) THERE IS NO AVOIDANCE OF TAXES BY EXCHANGE PROCEDURES. GROWERS DO RECEIVE TAX CREDIT CERTIFICATES AS NOTED IN PRECEEDING PARAGRAPH.

(H) UNTIL NOW CONTRACT PRICE WAS EQUAL TO "REIN-TEGRO" AND GROWER RECEIVED ENTIRE PESO COUNTERPART MINUS ANY DEDUCTIONS FOR SERVICES PERFORMED BY AGENT FRUTERA DE SEVILLA. AS EXPLAINED IN PARA E QUESTION OF WHO WILL RECEIVE THE U.S. \$0.40 INCREASE IS STILL OPEN.

(I) GOC RATIONALE FOR DIFFERENTIAL APPLICATION OF "REINTEGRO" INCREASE IS APPARENT BELIEF THAT ESTABLISHED MARKETS IN U.S. JAPAN AND WESTERN EUROPE WOULD BE ABLE TO ABSORB PRICE INCREASE WITH FEWER DIFFICULTIES THAN NEWER MARKETS IN EASTERN EUROPE. ARTICLE 5 OF LIMITED OFFICIAL USE

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THE 1846 TREATY OF PEACE AMITY, NAVIGATION AND COMMERCE BETWEEN THE U.S. AND COLOMBIA PROVIDES FOR MFN TREATMENT IN "DUTIES OR CHARGES" ON EXPORTS. HOWEVER, THE "REINTEGRO" IS IN EFFECT A MINIMUM PRICE AND THERE MAY BE A SUBSTANTIAL DIFFERENCE OF OPINION AS TO WHETHER IT CONSTITUTES A "DUTY OR CHARGE". GATT ARTICLE I MAY ALSO BE PERTINENT SINCE COLOMBIA, ALTHOUGH NOT YET A MEMBER OF THE ORGANIZATION, HAS APPLIED FOR PROVISIONAL ACCESSION.

3. UNITED REPS NOW STATE THAT DUE TO CURRENT STRONG PRICES FOR BANANAS IN EUROPE AND U.S. THEY DO NOT EXPECT INCREASE IN "REINTEGRO" TO HAVE ANY IMMEDIATE IMPACT AT CONSUMER LEVEL.

BY THIS THEY PRESUMABLY MEAN THAT IF 50-50 SPLIT
OF INCREASE IN "REINTEGRO" CAN BE WORKED OUT (PARA 2E)
CONTINENTAAL WOULD ABSORB COST OF U.S. \$0.20 PER BOX
TRANSFERRED TO PRODUCER. AT SAME TIME THEY NOTE THAT
PRICES TEND TO WEAKEN SEASONALLY IN JULY AND DECEMBER
AND THAT ONLY WAY TO MAINTAIN PRICES AND PROFIT MARGINS
DURING THESE PERIODS WOULD BE TO RESTRICT SUPPLY.

4. TRANSLATION TEXT OF MONETARY BOARD RESOLUTION INCREAS-
ING "REINTEGRO" TRANSMITTED SEPTEL. COPIES OF STANDARD
PRODUCER CONTRACTS WITH CONTINENTAAL AND FRUTERA DE
SEVILLA BEING POUCHED.
VAKY

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